

United States
Circuit Court of Appeals
For the Ninth Circuit.

W. H. SAWYER and FRANCES SAWYER, His
Wife, and ALFRED C. TUXBURY and
LUNA B. TUXBURY, His Wife,
Appellants,

vs.

RAYMOND S. GRAY and SENA GRAY, His Wife,
W. A. GRAY and LOIS A. GRAY, His Wife,
CHARLES S. FORBES and ADELAIDE
F. FORBES, His Wife, FRANK L. HUS-
TON, JOHN H. PATTEN and DORA W.
PATTEN, His Wife, W. W. BARR and
GERTRUDE G. BARR, His Wife, and MIL-
WAUKEE LAND COMPANY, a Corpora-
tion,
Appellees.

Transcript of Record.

Upon Appeal from the United States District Court
for the Western District of Washington,
Southern Division.

FILED

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No. 2385

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INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

	Page
Admission of Service of Citation on Appeal, etc..	45
Assignment of Errors.....	32
Bond on Appeal.....	40
Certificate of Clerk U. S. District Court to Transcript.....	43
Citation on Appeal.....	42
Citation on Appeal (Original).....	44
Judgment... ..	30
Names and Addresses of Solicitors.....	1
Order Allowing Appeal and Fixing Amount of Bond.....	39
Order Substituting Parties Complainant.....	31
Order Sustaining Demurrer and for Judgment..	30
Petition for Appeal.....	38
Stipulation for Correction of Stipulation for Substitution and for Preparation of Record on Appeal.....	4
Stipulation for Substitution of Executors and Heirs of Alfred C. Tuxbury in lieu of Alfred C. Tuxbury, deceased; and Concerning Preparation of Record on Appeal.....	2
Stipulation That Demurrers to Second Amended Bill of Complaint Shall Stand as Demurrers to Third Amended Bill of Complaint, etc...	29
Third Amended Bill of Complaint.....	6

Names and Addresses of Solicitors.

HERBERT S. GRIGGS, Esquire, Fidelity Building,
Tacoma, Washington, Solicitor for Appellants.

F. M. DUDLEY, Esquire, White Building, Seattle,
Washington, Solicitor for Milwaukee Land Com-
pany.

PETERS & POWELL, Esquires, New York Block,
Seattle, Washington, Solicitors for W. W. Barr
et ux.

W. A. REYNOLDS, Esquire, Chehalis, Washington,
Solicitor for Raymond Bray et ux., and W. A.
Gray et ux.

MOULTON & SCHWARTZ, Esquires, Portland,
Oregon, Solicitors for Chas. S. Forbes et ux.,
and Frank L. Huston, John H. Patten et ux.

[1*]

*In the United States District Court for the Western
District of Washington, Western Division.*

No. 1696.

W. H. SAWYER AND FRANCES SAWYER, His
Wife, and ALFRED C. TUXBURY and
LUNA B. TUXBURY, His Wife,
Complainants,

vs.

RAYMOND S. GRAY and SENA GRAY, His Wife,
W. A. GRAY and — GRAY, His Wife,
CHARLES S. FORBES and ADELAIDE F.

*Page-number appearing at foot of page of original certified Record.

FORBES, His Wife, FRANK L. HUSTON,
JOHN H. PATTEN, and DORA W. PAT-
TEN, His Wife, W. W. BARR, and —
BARR, His Wife, and MILWAUKEE LAND
COMPANY, a Corporation,

Defendants. [2]

**Stipulation [for Substitution of Executors and Heirs
of Alfred C. Tuxbury in Lieu of Alfred C. Tux-
bury, Deceased, and Concerning Preparation of
Record on Appeal].**

1. IT IS STIPULATED between the parties hereto, by their respective counsel, that in view of the death, since the commencement of this action, of Alfred C. Tuxbury, one of the complainants herein, Luna B. Tuxbury and Charles Hill, as executors of the estate of said Alfred C. Tuxbury, deceased, appointed as such by the Orphans' Court of Essex County, State of New Jersey, and Edith E. Tuxbury Hill, Alice Bosworth Tuxbury and Luna Elizabeth Tuxbury be substituted, as the executors of said estate and the heirs of said estate, together with Luna B. Tuxbury, in lieu of and instead of said Alfred C. Tuxbury, deceased, without requiring the probate of the will of said deceased, and the taking out of any ancillary letters of administration in said estate in any court in the State of Washington.

2. IT IS STIPULATED between the parties hereto, by their respective counsel, that service of notice of appeal, bonds on appeal, and all other papers in connection with the appeal, or proposed appeal, to be made by the complainants to the United States Circuit Court of Appeals from the judgment

herein dismissing this cause, etc., together with service of transcript and brief on appeal and all other papers, may be made and all be sufficient as to all of the defendants in error if made upon F. M. Dudley, Esq., as attorney for the defendant Milwaukee Land Company.

3. IT IS FURTHER STIPULATED AND AGREED between the parties hereto that the transcript of record on appeal shall include only the following papers, to wit: [3]

1. Summons and third amended bill of complaint.
2. Demurrer to second amended bill of complaint of Milwaukee Land Company and the stipulation providing that said demurrer shall stand as to each and every of the defendants to the third amended bill of complaint.
3. Order sustaining said demurrer.
4. Election of complainants to stand on third amended bill.
5. Judgment of dismissal in favor of defendants.
6. Bill of Exceptions and Order settling the same.
7. Petition for writ of error.
8. Order allowing writ of error.
9. Assignment of errors.
10. Bond on appeal.
11. Writ of error.
12. Citation in error.
13. Praecipe and stipulation for transcript.
14. Stipulation for substitution of executors and heirs of Alfred C. Tuxbury in lieu of said Alfred C. Tuxbury, and order allowing substitution.

4. IT IS FURTHER STIPULATED that the

Clerk in printing the record on appeal may omit from the various papers as above agreed on, the hearing and title of the cause other than a description of the particular paper, and also omit all endorsements on said paper, filing marks, service returns, verifications and receipts, save and except that the heading and title of this stipulation shall be entered in full.

HERBERT S. GRIGGS,
Attorney for Complainants.

F. M. DUDLEY,
Attorney for Milwaukee Land Company.

PETERS & POWELL,
Attorneys for W. W. Barr and Gertrude G. Barr,
His Wife.

W. A. REYNOLDS,
Attorney for Raymond S. Gray and Sena Gray, His
Wife, W. A. Gray and Lois Gray, His wife.

MOULTON & SCHWARTZ,
Attorney for Charles S. Forbes and Adelaide F.
Forbes, His Wife, Frank L. Huston, John H.
Patten and Dora W. Patten, His Wife.

(Filed Jan. 7, 1914.) [4]

Stipulation [for Correction of Stipulation for Substitution and for Preparation of Record on Appeal].

IT IS HEREBY STIPULATED AND AGREED between the parties hereto by their respective counsel that Paragraph III of the former stipulation entered into between said parties with respect to substitution of certain parties complainant and the

service of notice of appeal and other papers on appeal upon F. M. Dudley, Esq., be corrected to read as follows:

III.

It is further stipulated and agreed by the parties hereto that the transcript on record on appeal shall include only the following papers, to wit:

1. Summons and Third Amended Bill of Complaint.

2. Demurrer to Second Amended Bill of Complaint of Milwaukee Land Company and the Stipulation providing that said demurrer shall stand as the demurrer of each and every of the defendants to the Third Amended Bill of Complaint.

3. Order sustaining said demurrer.

4. Election of complainants to stand on Third Amended Bill of Complaint.

5. Judgment of dismissal in favor of defendants.

6. Petition for Appeal.

7. Order Allowing Appeal.

8. Assignments of Errors.

9. Bond on Appeal.

10. Citation on Appeal.

11. Praecipe for transcript.

12. The original Stipulation of which this stipulation is amendatory. [5]

13. Order Allowing Substitution of Executors and Heirs of Alfred Tuxbury, Deceased.

14. This stipulation.

Second. IT IS FURTHER STIPULATED that the other provisions of the original stipulation, to

wit: Paragraphs I, II and IV, remain in full force.

HERBERT S. GRIGGS,
Attorney for Complainants.

PETERS & POWELL,
Attorney for W. W. Barr and Wife.

W. A. REYNOLDS,
Attorney for Raymond S. Gray and Wife and W. A.
Gray and Wife.

MOULTON & SCHWARTZ,
H. D. H.,

Attorney for Frank L. Huston.

MOULTON & SCHWARTZ,
Attorney for John H. Patten and Wife.

F. M. DUDLEY,
Attorney Milwaukee Land Co.

(Filed Feb. 3, 1914.) [6]

Third Amended Bill of Complaint.

Complainants for cause of action against the said defendants, and each of them, allege and show to the Court as follows:

I.

That the complainants, W. H. Sawyer and Frances Sawyer, are now, and at all times in this third amended complaint mentioned *are*, husband and wife, and citizens of the United States and residents of the State of Massachusetts; that the complainants, Alfred C. Tuxbury and Luna B. Tuxbury, are now, and at all times in this third amended complaint mentioned were, husband and wife and citizens of the United States and residents of the State of New York.

II.

That the defendants, Raymond S. Gray and Sena Gray, are now, and at all times in this third amended complaint mentioned were, husband and wife and citizens of the United States and residents of the State of Washington; that the defendants, W. A. Gray and Lois Gray, are now, and at all times in this third amended complaint mentioned were, husband and wife and citizens of the United States and residents of the State of Washington; that the defendants, Charles S. Forbes and Adelaide F. Forbes, are now, and at all times in this third amended complaint mentioned were, husband and wife and citizens of the United States and residents of the State of Washington; that the defendant, Frank L. Huston, is, and at all times in this third amended complaint mentioned was, a citizen of the United States and a resident of the State of Oregon; that the defendants, John H. Patten and Dora W. Patten, are now, and at all [7] times in this third amended complaint mentioned were, husband and wife and citizens of the United States and residents of the State of Colorado; that the defendants, W. W. Barr and Gertrude G. Barr, are now, and at all times in this third amended complaint mentioned were, residents of the State of Washington and citizens of the United States; and that defendant, Milwaukee Land Company, is, and at all times in this third amended complaint mentioned was, a corporation organized and existing under the laws of the State of Washington and doing business in the State of Washington.

III.

That on January 25, 1899, the State of Washington made request to the Commissioner of Public Lands for a survey of all public lands in township 11 north, range 4 east, Willamette meridian (including also the public lands in certain other townships not included in this action), all under and pursuant to the provisions of the act of August 18, 1894; that at the time of the making of said request, the west half (W. $\frac{1}{2}$) of section thirty-two (32) of said township 11 north, range 4 east, was a part of the unappropriated unsurveyed public lands of the United States, and as such was duly surveyed and shown upon the plat and survey so requested, and which plat and survey was thereafter duly filed in the United States Land Office at Vancouver, Washington, on April 10, 1901; that thereby and pursuant to the provisions of said Act of August 18, 1894, said State of Washington was allowed a period of sixty days after the filing of said survey and plat, to wit, until June 9, 1901, within which to select from the said unappropriated lands in said township such portions thereof as it desired and within which to file in the said United States Land Office a list of its said selections; that on June 6, 1901, [8] the said State of Washington filed in the United States Land Office a list of *of* selections made by it under the provisions of said Act of August 18, 1894; that the said west half (W. $\frac{1}{2}$) of said section 32, township 11 north, range 4 east, was not included in the list so filed by the State of Washington, and was not, nor was any part thereof, selected and appropriated by

the State of Washington within the said limited period of sixty days, or at all.

IV.

That prior to March 29, 1900, F. A. Hyde & Company, a corporation organized and existing under the laws of the State of California, and their grantors had obtained United States Patents to and become the owner of certain land within the limits of the State of California, described as follows: All of section 16, and the west half (W. $\frac{1}{2}$) and the southeast quarter (SE. $\frac{1}{4}$) of section 36, township 9 north, range 28 west of San Bernardino meridian. That thereafter and prior to said March 29, 1900, the said lands owned by F. A. Hyde & Company, amounting in all to 1120 acres of land, were included within the limits of a public forest reservation established by the President and Congress of the United States and known as Pine Mountain and Zaca Lake Forest Reserve, and the said F. A. Hyde & Company, the owners thereof, under and pursuant to the provisions of the Act of Congress of June 4th, 1897, and other acts of Congress applicable and under and pursuant to the customs, rules and regulations in force and observed by the General Land Office and officials of the Land Department of the United States did relinquish the said tract or tracts amounting to 1120 acres so included in the Pine Mountain and Zaca Lake Forest Reserve; and did duly convey the said lands so relinquished to the Government by deed duly filed for [9] record and recorded in the Public Records of the State of California, and did duly furnish the United States officials with an ab-

stract of title duly authenticated, showing chain of title of land so relinquished from the Government back again to the United States, and that in lieu of the lands so relinquished and on or about March 29th, 1900, said F. A. Hyde & Company did make application for an entry upon the west half (W. $\frac{1}{2}$) of section 33, township 11 north, range 4 east of the Willamette meridian (together with certain other lands, the total amount of lands so selected amounting to 1120 acres in all), all situate in the county of Lewis, State of Washington; that the lands so relinquished, situate in the State of California, had all been patented by the United States and the said F. A. Hyde & Company were the owners thereof under such patents; that the said lands so selected, to wit, the west half (W. $\frac{1}{2}$) of section 32, township 11 north, range 4 east, W. M., was on said March 29, 1900, vacant, nonmineral, public lands, subject to homestead entry, and did not exceed in area the tract covered by the lands so relinquished and surrendered; that the said application was duly made and received and filed in the office of the United States Land Office at Vancouver, Washington, and the said F. A. Hyde & Company furnished said officials of said Land Office with an abstract of title duly authenticated, showing the title of the land so relinquished from the Government back to the United States, and also furnished due proof that said lands so selected in lieu thereof were vacant, unoccupied, nonmineral public lands open to entry and settlement and in all other respects complied with the laws, rules and regulations of the Government

applicable, and the said application was filed and proof was made and received in the said United States Land Office [10] at Vancouver, Washington, and in accordance with the customs, rules, and regulations in force and generally observed in said Department by the officials thereof, and by persons having business therein, and the said F. A. Hyde & Company, and their successors in interest, thereupon became the equitable owners and entitled to a patent to the said lands, but the Department of the Interior wrongfully and by mistake of law, and on or about December 21st, 1901, decided that said original application was invalid on the ground, and for the reason that at the time it was filed the sixty-day limit allowed the State of Washington to make selections of the public lands in said township 11 north, range 4 east, had not expired, and in that particular the complainants further allege that on March 29, 1900, to wit, at the time said F. A. Hyde & Company made said application and entry, and also on March 2, 1902, when the second application was made, as in paragraph five hereof stated, there was in force and generally observed in the Land Department of the United States, particularly in the United States Land Office at Vancouver, Washington, a custom, rule and regulation whereby applications such as those so made by F. A. Hyde & Company, were received and filed, and held, notwithstanding the fact that there was also on file at the same time a prior application or a request similar to that made by the State of Washington, as heretofore in paragraph three hereof alleged; and that pursuant to said claim, rule and

regulation, the said subsequent applications of F. A. Hyde & Company were received subject to any such prior applications and particularly to whatever selections the said State of Washington might make, as by law provided, within sixty days after the survey of said lands was made and filed, and subject to the final disposition of such prior applications, and in this instance that under [11] the said customs, rules and regulations the said application so subsequently received and filed was understood to and did in fact become the exclusive application and appropriation of all lands included within its descriptions which were not so definitely selected by the State of Washington within the sixty-day limit, and complainants allege as aforesaid that within the sixty-day limit the said State of Washington did file its list of selections, and that the list of selections so made by it did not include the said west half (W. $\frac{1}{2}$) of section 32, and complainants allege that thereupon and pursuant to the customs, rules and regulations in force and observed in said Land Office, and under and pursuant to the said Acts of Congress, the said application so made by F. A. Hyde & Company on March 29, 1900, and so received and filed by the officer of the said United States Land Office, did become the exclusive appropriation of said lands for the benefit of F. A. Hyde & Company and their successors, and that such appropriation took effect by relation to and as of the date of March 29th, 1900.

V.

That on March 3, 1902, after the sixty days allowed the State within which to file its list of selections

subsequent to the filing of the plat and survey of said lands as aforesaid had elapsed, and after all rights of the State of Washington in and to said west half of said section 32, or any part thereof, had lapsed as aforesaid, said F. A. Hyde & Company, pursuant to the terms of said Act of June 4, 1897, and pursuant to the customs, rules and regulations in force in and observed by the General Land Office and officials of the Land Department of the United States, made a second selection and application for an [12] entry upon the said west half (W. 1/2) of said section 32, township 11 north, range 4 east, of the Willamette Meridian, in lieu of certain other base land formerly owned by said F. A. Hyde & Co., and theretofore surrendered to and accepted by the United States Government in accordance with the provisions of said Act of June 4, 1897, and made due proof of all facts required to be proven under the terms of said Act to entitle said F. A. Hyde & Co. to the land so selected. Said selection was made in writing as required by law, and the said paper, together with certificates, affidavits, and other papers therein referred to, and as required by the rules and practice of the United States Land Department, were duly filed with the United States Land Office at Vancouver, Washington, on said March 3, 1902; that at the time of filing said second application and selection of said land, the said land was a part of the surveyed public lands of the United States, unappropriated and subject to entry and selection as aforesaid, and by virtue of the said second application thereof and entry thereon as aforesaid, by the said F. A. Hyde & Co.,

and the complainants, the said *F. A. & Co.*, their successors and assigns, thereupon became the equitable owners of said land, and became entitled to patent therefor; that prior to the time of making said second selection, the said *F. A. Hyde & Co.* were the owners under patent from the United States of the northeast quarter (NE. $\frac{1}{4}$) and the southeast quarter (SE. $\frac{1}{4}$) of section 16, township 9 north, range 28 west of San Bernardino Meridian, and containing 320 acres situate in the State of California, and that the lands so owned had subsequent to the patenting of the same by the United States been included within the boundaries of the Pine Mountain and Zaca Lake Forest Reserve, and that the said *F. A. Hyde & Co.*, as [13] the owners thereof, had duly relinquished and reconveyed the said lands to the United States, and that the said second application made by the said *F. A. Hyde & Co.*, for the said west half (W. $\frac{1}{2}$) of said section 32, township 11 north, range 4 east, was so made by them in lieu of said 320 acres of land so relinquished, and that the said second application was accompanied by an abstract of title duly authenticated and certified, showing chain of title to the land so relinquished from the Government back again to the United States, together with due proof from the public officers showing that the said land so relinquished was free from incumbrances of any kind, and that all taxes thereon to the date of said second application had been paid, together with affidavits showing the said lands so selected in lieu thereof were nonmineral and non-saline in character and unoccupied, and that the said

F. A. Hyde & Co. in all other respects conformed to the acts of Congress and laws of the Land Department of the United States; that the said second application, with all papers accompanying the same, were duly received and filed by the officers of said Land Department at Vancouver, Washington, and duly forwarded to the Commissioner of the General Land Office at Washington, D. C., for consideration and approval, all in accordance with the acts of Congress applicable thereto.

That prior to March 29, 1900, and for the purpose among other things of facilitating the exercise by those entitled thereto of the rights provided under the said act of June 4, 1897, for the owners of lands included in forest reserves, and for the purpose of facilitating the transfer of such rights and giving the same some practical value in accordance with the intent and purpose of said act of June 4, 1887, the Department [14] of the Interior had promulgated the rule of allowing and permitting the owner or owners of such lands to file applications as aforesaid for timber lands in lieu thereof by and through an attorney or attorneys in fact appointed for that purpose by the said owners by written power of attorney, and that prior to said March 29, 1900, the practice and custom had grown up and become established and was universally observed in the United States Land Offices with the knowledge, consent and approval of the Secretary of the Interior and all of the officials of the Land Department of the United States wherein and whereby the said rights to select lieu lands were regularly and usually

and commonly sold in the open market and the said rights exercised under powers of attorney by persons other than the original owners of the lands that had been included in United States forest reserves.

That pursuant to said practice and customs the abstract of title and written power of attorney and other papers evidencing the right shown by the original owner of the land included in any particular forest reserve, became known as lieu land scrip and was bought and sold in the open market for value, and the rights thereunder were exercised by the final purchasers thereof to the extent of many thousands of acres all with the knowledge, consent and approval of the various registers and receivers of the various land offices of the United States and the Secretary of the Interior and other officials of the Department of the Interior of the United States.

That this practice and custom was so observed and followed and consented to and approved of by the officials of the United States Land Office and Department of the Interior as aforesaid in a thousand or more instances between the date [15] of the passage of said act of June 4, 1887, and said March 29, 1900, and thereafter continuously until after March 3, 1902.

That your complainants had knowledge of the said practice and custom and of the knowledge, consent to and approval thereof by the said officials of the United States Land Offices and of the Department of the Interior and in reliance thereon and in good faith purchased of the said F. A. Hyde & Company their said rights under the surrender and conveyance

by said F. A. Hyde & Company to the United States of the 1120 acres of land referred to in paragraph 4 hereof and on the said 320 acres of land referred to and described in paragraph 5 hereof, and that your complainants have succeeded to all of the rights, titles and interests of the said F. A. Hyde & Co. under said relinquishments and conveyances and the said applications made in the name of F. A. Hyde & Co. as aforesaid, and are entitled to have patents to the said lieu lands so selected and applied for issued and confirmed in their said grantors, said F. A. Hyde & Co., or to the complainants as their said successors and assignees.

That the said second application, as also the said original application for said lands, made in the name of F. A. Hyde & Co., was in truth and in fact made for and on behalf of complainants herein as the purchasers and owners of the rights of the said F. A. Hyde & Co. to make selection of public and unappropriated lands for and in lieu of the base land theretofore surrendered by said F. A. Hyde & Co. to the United States as aforesaid, and on December 24, 1900, complainants duly filed and caused to be recorded in the office of the Auditor of Lewis County, Washington, in Volume 1 of Powers of Attorney, at page 341 (the lands hereinbefore being situate in said Lewis County, [16] Washington), the original power of attorney executed by the said F. A. Hyde & Co. to one Charles Hill, authorizing said attorney to select lieu lands in lieu of the base lands theretofore owned and surrendered in the United States Government by said F. A. Hyde & Co., as

aforesaid, and with full power to sell and dispose of the lands so selected, and also on December 24, 1900, caused to be filed and recorded in the office of the Auditor of said Lewis County, Washington, in volume 59 of Deeds, at page 418, a deed conveying to complainants all rights, titles, and interests in and to said west half (W. 1/2), of section 32, township 11 north, range 4 east, and complainants allege that in fact and in truth the said Charles Hill, so appointed attorney in fact for the said F. A. Hyde & Co., was the agent and trustee of and for your complainants of all rights and interests which the said F. A. Hyde & Co. had to select lands in lieu of the base lands surrendered as a part of the said original application made in the name of F. A. Hyde & Co., on March 29, 1900, and to select lands in lieu of the lands owned by the said F. A. Hyde & Co., and surrendered as a part of selections made under the second application made in the name of F. A. Hyde & Co. on March 3, 1902. That the instruments and papers so filed in the United States Land Office at Vancouver, Washington, and in the office of the Auditor of Lewis County, Washington, were notice of the contents thereof to the world under and in accordance with the provisions of the Statutes of the State of Washington, and particularly under and in accordance with the provisions of Section 8781, Remington & Ballinger's Annotated Codes and Statutes of the State of Washington, and acts amendatory thereof. [17]

That the rights so acquired by your complainants under the relinquishments and conveyances to the United States of said 1440 acres of land and under

the selections made in lieu thereof as aforesaid were expressly recognized, protected and confirmed by the provisions of the Act of Congress of June 6, 1900, entitled Sundry Civil Appropriation Act 31 Stat. L., page 614, and also by the provisions of the Act of Congress of March 3, 1901, 31 Stat. L., page 1037 and by the provisions of the Act of Congress of March 3, 1905, 33 Stat. L., p. 1264, and the rejection of your complainants' first or original application and selection as aforesaid and the issuing of patents to other parties as hereinafter stated, to the lands so selected, and in disregard of your complainants' said rights under said relinquishments and conveyances of the base land and said original and supplementary selections of the said lieu land was and each of said acts was in violation of the provisions of said acts and was and is unauthorized and void.

VI.

That shortly after the filing of said second application and entry upon said land, to wit, on or about the 21st day of November, 1902, the Land Department of the United States promulgated a rule and order suspending all further proceedings upon entries made with any of the so-called Hyde scrip, which order had never been revoked and is still in force, and which order affected said second application. That no action has been taken by the United States Land Department since that date on said second application and selection of your complainants and their assignors as aforesaid; that your petitioners have at all times and in all things exercised due diligence in attempting to secure a hearing before the land

Department of the United States upon their said second application and entry upon said lands made on March 3, 1902, as aforesaid; that no hearing has ever been had thereon, and no action has ever been taken thereon, and the same remains and is still pending before the Land Department of the United States as aforesaid.

VII.

That on or about May 1st, 1908, a United States patent for a portion of the said lands, to wit, the west one-half (W. $\frac{1}{2}$) [18] of the southeast quarter (SE. $\frac{1}{4}$) and the southeast quarter (SE. $\frac{1}{4}$) of the southwest quarter (SW. $\frac{1}{4}$) of section thirty-two (32), township eleven (11) north, range four (4) east, of the Willamette Meridian, was issued by the United States Government to the defendant Raymond S. Gray, said Raymond S. Gray having theretofore made a certain pretended entry and application for the purchase of said land; that on or about November 8, 1905, a United States Patent covering certain other portions of said lands, to wit, the west half (W. $\frac{1}{2}$) of the northwest quarter (NW. $\frac{1}{4}$) and the southeast quarter (SE. $\frac{1}{4}$) of the northwest quarter (NW. $\frac{1}{4}$) and the northeast quarter (NE. $\frac{1}{4}$) of the southwest quarter (SW. $\frac{1}{4}$) of said section thirty-two (32), was issued by the United States to the defendant Charles S. Forbes, having theretofore made a certain pretended entry on and application for the purchase of said land; that on or about the 30th day of December, 1907, a United States patent covering the other portion of said lands, to wit, the northeast quarter (NE. $\frac{1}{4}$) of the northwest

quarter (NW. $\frac{1}{4}$) of said section thirty-two (32), was issued by the United States to John H. Patten, said John H. Patten having theretofore made a certain pretended entry on and application for the purchase of said land. That the United States patent to Raymond S. Gray was recorded in volume 1 of patents, at page 637, and was filed for record in the office of the Auditor of Lewis County, Washington, on September 29, 1906, and designated as fee number 36,222. That said United States patent to Charles S. Forbes was recorded in volume 5 of patents, at page 474, and was recorded in the office of the Auditor of said Lewis County, Washington, on or about June 15, 1907, and designated as fee number 40,758. That said United States patent to John H. Patten was recorded in Volume 7 of United States [19] Patents, at page 362, and on February 5, 1908, was recorded in the office of the Auditor of said Lewis County and designated as fee number 43,738. That thereafter and prior to the commencement of this suit various transfers of the said property have been made or attempted to be made by the said patentees to one or more of the other defendants herein, and that under and by virtue of the said patents and the said divers mesne conveyances and under the covenants of warranty contained in the various deeds made or attempted to be made by the said defendants of the said lands, or some portion thereof, the said defendants claim to have some right, title or interest in and to the said lands or some portion thereof, the exact nature and particulars of which said claims and interests, if any, your com-

plainants have no knowledge of, other than as herein stated; but complainants allege that in fact and in truth each and every of the said patents in this paragraph hereinbefore described was and were issued as aforesaid in contravention of the rights, claims and interests in and to said lands of or belonging to your complainants and their said grantors, F. A. Hyde & Co., and without any knowledge thereof on the part of these complainants or their said grantors, and that each and every of the said divers deeds made or attempted to be made of said lands, or some portion thereof, by and between these defendants as aforesaid, were made in contravention of the claims, rights and interests in said lands of these complainants, and their said grantors, and without any knowledge thereof on the part of these complainants or their said grantors, F. A. Hyde & Co., and said patents and deeds were and are void and should be canceled. And complainants further allege that each and every of said defendants, at the time of making their said pretended applications [20] for and entry upon and purchase of said lands from the United States Government and at the time of the issuance of the United States patent therefor as aforesaid, and at all times since prior to the commencement of this action, by the exercise of due diligence could have acquired and should have acquired full knowledge, of the rights, claims and interest of these complainants, and their said grantors, in and to the said premises, and as complainants are informed and verily believe did have actual notice and knowledge thereof, and that whatever claim, right, title or in-

terest these defendants or any of them had in and to the said premises was acquired with full knowledge of the said prior right of these complainants and their said grantors, F. A. Hyde & Co., in and to the said lands or any part thereof, have been so or otherwise acquired by said defendant, or any of them, are wholly subsequent, inferior and subject to the said right, and title of the complainants thereto. That the complainants had no knowledge of the making of said attempted entries upon said land by and on behalf of certain of said defendants, or of the said pretended patents and deeds, or of any of them, until shortly prior to the commencement of this suit. That complainants were relying in good faith upon the validity of their said applications for said lands as a fully and complete appropriation of the said lands to themselves exclusively, and upon the fact that their said application and entry made March 3, 1902, was still pending before the Land Department of the United States for approval thereof and for issuance of patent thereon, and that as soon as complainants were fully advised and that by mistake and error on the part of the defendants and the officials of the Land Department, other persons were making or had been making entries on and attempts to secure said lands, [21] and that these complainants were being or might be defrauded of their rights and interests in said lands, your complainants at once commenced this action. That each and every of said pretended entries so made by said defendants on said land was permitted by the officials of the Land Department of the United States, and the said patents

to said land were issued as aforesaid by and on mistake of facts as well as law, and for the reason that said United States officials overlooked the fact that said second application made in the name of F. A. Hyde & Co. was still pending before the Land Department and was undisposed of, and that said lands under and by virtue of said second application had already been exclusively appropriated to and by said mistake, the exact nature of which is unknown to complainants, the pendency of said second application, and complainants' rights thereunder, were overlooked and forgotten and said patents erroneously and illegally issued as aforesaid.

VIII.

That on or about November 2, 1890, the Northern Pacific Railway Company attempted to file in the United States Land Office at Vancouver, Washington, a list of selections under the provisions of the Acts of Congress of March 2, 1899, which list included the west half (W.1/2) of section 32, township 11 north, range 4 east, but the said selection was never accepted or received by the officials of the said Land Office, but was expressly rejected, and that any and all rights which the said Northern Pacific Railway Company might have had in the said lands under a selection properly made and received and filed in said Land Office were long prior to the inception of any title or interest in said lands by or on behalf of any of defendants wholly waived and abandoned, and other lands selected by patent to [22] said Northern Pacific Railway Company, in lieu thereof.

IX.

That the issuance and record of the said United States Patents to said lands as aforesaid, and the making and entry of the said pretended deeds of said lands, or some part thereof which have passed between the defendants, as aforesaid, constitute, and each and every of the said instruments and the record thereof constitute, a cloud upon the title of these complainants to the said lands.

X.

That the premises considered, the defendants and each and every of them so far as they have any apparent record or legal title to the said lands under and by virtue of the said United States Patents issued therefor as aforesaid and the divers mesne conveyances issued as between the said defendants, are in fact and in truth holders of the legal title of said lands in trust for these complainants.

XI.

That said lands are vacant and unoccupied lands.

XII.

That the complainants have no speedy, adequate or sufficient remedy at law, and that it is necessary for complainants to invoke the equitable powers of the courts as herein prayed for.

WHEREFORE, complainants pray :

(1) That a monition or other process in accordance with the custom and practice of the Court may be issued and served upon the defendant requiring each of them to appear in court and make full and true answer upon oath of the matters set forth in this third amended bill of complaint, and particularly

to set [23] forth whatever right, title or interest they or any of them have or claim to have in and to the said property or any part thereof in the complaint described;

(2) For the decree of this Court establishing and declaring these complainants to be the sole and exclusive owners of the said lands in the complaint described, and of each and every part thereof, free and clear of any right, title or interest therein or thereto, of or belonging to the said defendants or any of them, or any person claiming by, through or under them, or any of them, and establishing and declaring that each and every of the said defendants so far as they or any of them have an apparent or legal title to any portion of the said lands under and by virtue of the United States patents heretofore issued therefor as in the complaint alleged and in this third amended complaint alleged and conveyances from the patentees therein named are in fact and in truth holders thereof in trust for the sole and exclusive use of these complainants, and ordering and directing the said defendants to execute and deliver to these complainants and their legal representatives a good and sufficient deed or deeds of the premises in this third amended complaint described, and for the further order of this Court appointing a special Commissioner to carry out the said order and decree of the Court and to execute and deliver to the complainants such deed or deeds of the premises, in the event that any of the said defendants fail to do so within such reasonable time as the Court shall fix for executing and delivering to the complainants such

deed or deeds, or that said patents and deeds be ordered cancelled;

(3) Or in the alternative declaring the said several deeds conveying the said premises, or any part thereof, to the [24] said defendants, or any of them, and all other deeds of conveyance of said lands, or any part thereof, to the said defendants, or any of them, and all other deeds of conveyance of the said lands, or any part thereof, made by and between the said defendant or any of them, to be wholly void, and ordering same to be cancelled and set aside of record;

(4) That these complainants have such other and further or different relief as to the Court may seem best.

HERBERT S. GRIGGS,
Attorney for Complainants.

Office: 1115 Fidelity Bldg., Tacoma, Wash.

State of Washington,
County of Pierce,—ss.

Herbert S. Griggs, being first duly sworn, on oath deposes and says: That he is the attorney for the complainants in the above-entitled cause; that he makes this verification for the reason that all of the complainants are nonresidents of the State of Washington, and are not now within the said State of Washington; that he has read the foregoing Third Amended Bill of Complaint, knows the contents thereof, and that the same are true, as he verily believes.

HERBERT S. GRIGGS:

Subscribed and sworn to before me this 28 day of October, 1913.

[Seal] C. E. STEVENS,
Notary Public in and for the State of Washington,
Residing at Tacoma.

“Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Nov. 10, 1913. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy.” [25]

Demurrer to Second Amended Bill.

The said defendant, the Milwaukee Land Company, not confessing all or any of the matters and things in the second amended bill of complaint herein to be true, as therein alleged, doth demur to said second amended bill for the following reasons:

I.

That it appears upon the face of said second amended bill that the said complainants are guilty of laches.

II.

That the said second amended bill is without equity and does not set forth any matters entitled said complainants to any relief in this court.

WHEREFORE, this defendant prays the judgment of this Court whether it shall be compelled to further answer make unto said second amended bill.

F. M. DUDLEY,
GEO. W. KORTE,

Solicitors for Defendant, Milwaukee Land Company.

I, F. M. Dudley, of counsel for the defendant, Mil-

waukee Land Company, in the above-entitled cause, do hereby certify that the foregoing demurrer to the second amended bill of complaint is in my opinion well founded in law.

F. M. DUDLEY.

(Verification.)

(Filed Jul. 25, 1912.) [26]

Stipulation [That Demurrers to Second Amended Bill of Complaint Shall Stand as Demurrers to Third Amended Bill of Complaint, etc.]

IT IS HEREBY STIPULATED by and between the complainants and the several defendants, by their respective counsel herein, that the demurrers heretofore filed herein by and on behalf of the defendants, or some of them, to the *seconded* amended bill of complaint shall stand as the demurrers of the said defendants, and each of them, to complainants' third amended bill of complaint, and that a hearing may be had upon the said demurrers on Monday, the 3d day of November, 1913, at Tacoma, Washington, at 10 o'clock A. M., or as soon thereafter as counsel can be heard.

HERBERT S. GRIGGS,

Attorney for Complainants.

F. M. DUDLEY,

PETERS & POWELL,

Attorneys for Defendants Barr and Wife.

W. A. REYNOLDS,

Attorney for Defendants Gray.

MOULTON & SCHWARTZ,

Attorneys for Defendants Huston.

(Filed Nov. 10, 1913.) [27]

Order Sustaining Demurrer and for Judgment.

Now, on this 10th day of November, 1913, the above-entitled cause coming on regularly for hearing before the Hon. EDWARD E. CUSHMAN, of the above-entitled court, upon the third amended bill of complaint on file herein, and the demurrers thereto on the part of the defendants and the written stipulation of the parties hereto, by their respective attorneys, on file herein, stipulating that the demurrers filed by the defendants to the second amended bill shall stand as the demurrers of said defendants, and each of them, to the third amended bill, and the Court being fully advised,—

IT IS ORDERED that the said demurrers be, and they are hereby, sustained; and complainants thereupon by their counsel, Herbert S. Griggs, in open court, having elected to stand upon their said third amended bill of complaint, and refused to plead further,—

IT IS CONSIDERED ORDERED AND ADJUDGED that the said third amended bill of complaint and this action be, and the same is hereby dismissed, and that the defendants herein, Raymond S. Gray and Sena Gray, his wife, W. A. Gray and Lois A. Gray, his wife; Charles S. Forbes and Adelaide F. Forbes, his wife, Frank L. Huston, John H. Patten and Dora W. Patten, his wife, W. W. Barr and Gertrude G. Barr, his wife, and Milwaukee Land Company, a corporation, do have and recover judgment against the plaintiffs W. H. Sawyer and Frances S. Sawyer, his wife, and Alfred C. Tuxbury

and Luna B. Tuxbury, his wife, for their costs and disbursements herein to be taxed.

IT IS FURTHER ORDERED AND ADJUDGED that all the [28] testimony heretofore taken herein and filed with the referee and all papers and documents on file with the said referee be remanded and placed on file with the clerk of the above-entitled court.

To all of which the complainants by their counsel duly except, and such exception is allowed.

EDWARD E. CUSHMAN,

Judge.

Dated Tacoma, Washington, November 10th, 1913.

(Filed Nov. 10, 1913.) [29]

Order [Substituting Parties Complainant].

On suggestion of the complainants and upon stipulation signed by attorneys for all parties and on file herein, it appearing that since the commencement of this action Alfred C. Tuxbury, one of the complainants, has died, and that Luna B. Tuxbury and Charles Hill have been duly appointed executors of the estate of said deceased, and that said Luna B. Tuxbury, Edith E. Tuxbury Hill, Alice Bosworth Tuxbury and Luna Elizabeth Tuxbury are the sole heirs of the estate of said deceased, and should be substituted as parties complainant to the above-entitled cause in lieu of said Alfred C. Tuxbury, deceased,—

IT IS ORDERED that said substitution be made and the said appearance of said executors and heirs

of said deceased may and shall be entered herein as parties complainant in lieu of said Alfred C. Tuxbury, deceased.

EDWARD E. CUSHMAN,
Judge.

1/12/14.

(Filed Jan. 12, 1914.) [30]

Assignment of Errors.

Now, this 2d day of February, 1914, come the complainants, by Herbert S. Griggs, their attorney and solicitor, and say: That the order and decree in the said cause entered herein by the Honorable E. E. CUSHMAN, Judge, on November 10, 1913, is erroneous and against the just rights of these complainants for the following reasons:

I.

The Court erred in sustaining the demurrer to the complainants' Third Amended Bill of Complaint in that it did not hold that by the admissions of the demurrer thereto, the complainants or their grantors, on the 29th day of March, 1900, made a valid forest lieu selection of the west half of section thirty-three (33), township eleven (11) north, range four (4) east of Willamette meridian, under and in accordance with the provisions of the act of Congress of June 4, 1897, and acts amendatory thereof and the customs, rules and regulations of the General Land Office and Land Department of the United States as set forth in said bill and particularly in paragraph IV thereof.

II.

The Court erred in sustaining the demurrer to com-

plainants' Third Amended Bill of Complaint in that it did not hold that by the admissions of the demurrer thereto the complainants or their grantors, on March 2, 1902, made a valid forest lieu selection of the lands in the preceding paragraph hereof described, under and in accordance with the provisions of the Act of Congress of June 4, 1897, and the Acts amendatory thereof, and the customs, rules and regulations of the Land Department and the General Land Office of the United States. [31]

III.

The Court erred in sustaining the demurrer to complainants' Third Amended Bill of Complaint in that it did not hold that by the admissions of the demurrer thereto the forest lieu selection of the complainants, or their predecessors in interest, F. A. Hyde & Company, on March 29, 1900, of the lands described in paragraph I hereof was prior in time to and initiated a right and interest superior to the claim of any person or persons whomsoever, and particularly the defendants.

IV.

The Court erred in sustaining the demurrer to complainants' Third Amended Bill of Complaint in that it did not hold that by the admissions of the demurrer thereto, the forest lieu selection of complainants, or their predecessors in interest, made upon the lands described in paragraph I hereof, on March 2, 1902, was prior in time to and initiated a right and interest superior to the claim of any person or persons whomsoever, and particularly the defendants.

V.

The Court erred in sustaining the demurrer to the complainants' Third Amended Bill of Complaint in that it did not hold that by the admissions of the demurrer thereto, the pretended and attempted entries and applications for the purchase of all or portions of the land described in paragraph I hereof, made by the defendants or some of them, were each and all subsequent in time and inferior in right to the said forest lieu selections of the complainants or their predecessors in interest.

VI.

The Court erred in sustaining the demurrer to the complainants' Third Amended Bill of Complaint in that it did [32] not hold that by the admissions of the demurrer thereto, the forest lieu selections of the complainants, or their predecessors in interest, had been in compliance with and conformity to the Acts of Congress applicable thereto and the customs, rules, and regulations of the Land Department and General Office of the United States applicable thereto, and by the transfer to complainants from their predecessors in interest, F. A. Hyde & Company, of all their rights to apply for forest lieu selections in lieu of the base land surrendered by said F. A. Hyde & Company to the United States in paragraphs IV and V of said Third Amended Bill of Complaint set forth, the complainants became the *bona fide* purchasers of said rights and under the forest lieu selections made by them thereunder as in paragraphs IV and V of the Third Amended Bill of Complaint stated, the complainants obtained a vested interest in the land so

selected and which land is described in paragraph I hereof.

VII.

The Court erred in sustaining the demurrer to the complainants' Third Amended Bill of Complaint in that it did not hold that by the admissions of the demurrer thereto, the alleged entries and applications for the said land made by the defendants and the issuance of patents therefor, were made in contravention of the vested rights of the complainants herein.

VIII.

The Court erred in sustaining the demurrer to the complainants' Third Amended Bill of Complaint in that it did not hold that by the admissions of the demurrer thereto the complainants were equitably entitled to be protected in the forest lieu selections which were made in the name of their predecessors in interest on the lands described in paragraph I hereof as [33] against the claims of the defendants or any of them or any person or persons whomsoever.

IX.

The Court erred in sustaining the demurrer to the complainants' Third Amended Bill of Complaint in that it did not hold that by the admissions of the demurrer thereto the complainants were equitably entitled to have the defendants declared trustees for the complainants of the lands described in paragraph I hereof.

X.

The Court erred in sustaining the demurrer to the

complainants' Third Amended Bill of Complaint in that it did not hold that the rights and interests of the complainants in the said land described in paragraph I hereof, under the forest lieu selections made in the name of their predecessors in interest as set forth in paragraphs IV and V of the Third Amended Bill of Complaint and made and in accordance with the Act of Congress of June 4, 1897, and the customs, rules and regulations of the Land Department of the United States, had been recognized, approved, ratified and confirmed by the provisions of the Act of Congress of June 6, 1900; also by the provisions of the Act of Congress of March 3, 1901, and also by the provisions of the Act of Congress of March 3, 1905, and that the acts of the officials of the Land Department of the United States in attempting to disallow the said forest lieu selections made on March 29, 1900, and in neglecting to recognize, act upon, and approve the said forest lieu selection made on March 2, 1902, and in thereafter attempting to receive and recognize the subsequent entries and applications for said land made by the defendants, or some of them, and in issuing patents for said land or some [34] part thereof to the defendants, were each and all unauthorized, illegal and void and in contravention of the vested rights of the complainants in the said land.

XI.

The Court erred in sustaining the demurrer to complainants' Third Amended Bill of Complaint in that it did not hold that under the forest lieu selections made in the name of complainants' predeces-

sors in interest as set forth in paragraphs IV and V of the Third Amended Bill of Complaint, the complainants became the *bona fide* purchasers and the equitable owners of the said land described in paragraph I hereof, and entitled to the issuance of a patent thereof to them or to their said predecessors in interest, F. A. Hyde & Company.

XII.

The Court erred in sustaining the demurrer to complainants' Third Amended Bill of Complaint in that it did not hold that by the admissions of the demurrer thereto, the several defendants at and before the time they attempted to enter upon and purchase the land described in paragraph I hereof, they and each of them, had notice of the vested rights and interests therein of complainants and their predecessors in interest, and that the equitable interest of the complainants in and to the said land became vested by relation as of the dates of March 29, 1900, and March 2, 1902, and prior to the inception of any right or interest therein of the defendants, or any of them, or any other person, and that the equities of the complainants in the matter involved in said cause were and are superior to the equities of the defendants and declared trustees for the complainants, or their predecessors in interest, of the said lands described in paragraph I hereof.

[35]

XIII.

The Court erred in sustaining the demurrer to complainants' Third Amended Bill of Complaint in that it did not hold that the said bill stated a good

cause of action to which the defendants should be required to file their several answers or pleas.

XIV.

The Court erred in sustaining the demurrer to complainants' Third Amended Bill of Complaint and decreeing that said amended bill of complaint be dismissed and allowing costs to the defendants.

WHEREFORE complainants and appellants pray that the decree of the said Court be reversed and such directions be given that full force and efficacy inure to the complainants by reason of the cause of suit set up in their Third Amended Bill of Complaint filed in said cause and that a decree be entered in accordance with the prayer of complainants' Third Amended Bill of Complaint.

HERBERT S. GRIGGS,

Attorney and Solicitor for Complainants.

“Filed in the U. S. District Court, Western District of Washington, Southern Division, Feb. 3, 1914. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy.” [36]

Petition for Appeal.

The above-named complainants, conceiving themselves aggrieved by the decree made and entered on the 10th day of November, 1913, in the above-entitled cause, do hereby appeal from said Order and Decree to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the Assignments of Errors, which is filed herewith, and they pray that this appeal may be allowed and that

a transcript of the records, proceedings and papers upon which said Order was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

Dated at Tacoma, Washington, this 31st day of January, 1914.

HERBERT S. GRIGGS,
Attorney for Complainants.

(Filed Feb. 3, 1914.) [37]

Order Allowing Appeal [and Fixing Amount of Bond].

On petition of the complainants herein and on the motion of Herbert S. Griggs, their attorney, and upon the records and proceedings had and on file herein and the Assignment of Errors filed with the said petition,—

IT IS ORDERED that an appeal by the complainants from the order and judgment sustaining defendants' Demurrer to the Third Amended Bill of Complaint and dismissing the said cause entered herein on *November, 1913*, to the United States Circuit Court of Appeals for the Ninth Circuit, be and the same is hereby allowed, and

IT IS FURTHER ORDERED that the said appeal is to operate as a *supersedeas* and stay upon the filing of a bond herein in the sum of Five Hundred Dollars, and Fidelity and Deposit Company of Maryland is hereby accepted on said bond as surety,

and said bond is now approved.

EDWARD E. CUSHMAN,

Judge.

(Filed Feb. 3, 1914.) [38]

Bond on Appeal.

WHEREAS in the above-numbered and entitled cause complainants W. H. Sawyer and Frances Sawyer, his wife, and Luna B. Tuxbury, wife of Alfred C. Tuxbury, deceased, and Luna B. Tuxbury and Charles Hill, as executors of the estate of Alfred C. Tuxbury, deceased, and Edith E. Tuxbury Hill, Alice Bosworth Tuxbury and Luna Elizabeth Tuxbury (having been substituted as complainants in lieu of said deceased), have petitioned for an appeal to the Circuit Court of Appeals of the United States for the Ninth Circuit from the order and judgment of the Court entered in the above-entitled cause on the 10th day of November, 1913, and the said appeal has been allowed by the Honorable E. E. Cushman, Judge, of the above-entitled Court; and

WHEREAS, the said Court has fixed the security that the defendants shall give and furnish in the sum of Five Hundred and no/100 Dollars;

NOW, THEREFORE, W. H. Sawyer and Frances Sawyer, his wife, and Luna B. Tuxbury, wife of Alfred C. Tuxbury, deceased, and Luna B. Tuxbury and Charles Hill, as executors of the estate of Alfred C. Tuxbury, deceased, and Edith E. Tuxbury Hill, Alice Bosworth Tuxbury and Luna Elizabeth Tuxbury, principals, and American Surety Company of

New York, as surety, acknowledge themselves firmly bound unto the defendants in the sum of

Hundred

E. E. C. Five ~~Thousand~~ Dollars conditioned that the complainants W. H. Sawyer and Frances Sawyer, his wife, and Luna B. Tuxbury, wife of Alfred C. Tuxbury, deceased, and Luna B. Tuxbury and Charles Hill, as executors of the estate of Alfred C. Tuxbury, and Luna Elizabeth [39] Tuxbury, shall prosecute its said appeal to effect, and if it fail to make its plea good shall answer all costs. The surety heretofore named hereby expressly covenants and agrees that in case of a breach of any condition of this bond, the above-entitled court upon notice to the surety of not less than ten days shall proceed summarily in which said bond is given to ascertain the amount which the said surety is bound to pay on account of the breach thereof, and render judgment therefor against the surety and award execution thereof against the surety.

IN TESTIMONY WHEREOF, witness the names of the parties hereto affixed by their duly authorized agents and officers, this 2d day of February, 1914.

W. H. SAWYER and
FRANCES SAWYER,
LUNA B. TUXBURY,
LUNA B. TUXBURY and
CHAS. HILL, as Ex., etc.,

EDITH E. TUXBURY HILL,
 ALICE BOSWORTH TUXBURY and
 LUNA ELIZABETH TUXBURY.

By HERBERT S. GRIGGS,

Their Atty. and Agent.

AMERICAN SURETY COMPANY OF NEW
 YORK,

Surety.

By FRANK ALLYN, Jr.,

Resident Vice-president.

Attest: C. E. DUNKLEBERGER,

Resident Asst. Secretary.

[Seal of Surety Company.]

(Filed Feb. 3, 1914.) [40]

Citation on Appeal.

To Raymond S. Gray and Sena Gray, His Wife; W. A. Gray and Lois A. Gray, His Wife, Charles S. Forbes and Adelaide F. Forbes, His Wife; Frank L. Huston, John H. Patten and Dora W. Patten, His Wife, W. W. Barr and Gertrude G. Barr, His Wife, and Milwaukee Land Company, a Corporation, Defendants, Greeting:

WHEREAS, W. H. Sawyer et al., appellants in the above-entitled suit, have lately appealed to the United States Circuit Court of Appeals for the Ninth Judicial Circuit, from a decree lately rendered in the District Court of the United States for the Western District of Washington, Western Division, made in favor of you, the defendants in the above-entitled cause, and have filed the security required by law; you are therefore hereby cited to appear before the

said United States Circuit Court of Appeals at the city of San Francisco, State of California, on the 4th day of March, 1914, next, to do and receive what may pertain to justice to be done in the premises.

Given under my hand at the city of Tacoma, in the Ninth Judicial Circuit, this 2d day of February, in the year of our Lord one thousand nine hundred fourteen.

[Seal]

EDWARD E. CUSHMAN,

Judge of the District Court of the United States.

(Filed Feb. 3, 1914.) [41]

[Certificate of Clerk U. S. District Court to Transcript.]

United States of America,
Western District of Washington,—ss.

I, Frank L. Crosby, Clerk of the United States District Court for the Western District of Washington, do hereby certify and return to the claim of appeal of W. H. Sawyer and Frances Sawyer, his wife et al., in a cause pending in said court wherein W. H. Sawyer et al. are complainants and appellants and Raymond S. Gray et al. are respondents and appellees, that the above and foregoing is a true copy of all papers filed and proceedings had and entered in said cause as the same appear on file and of record in my office, pursuant to stipulation of counsel filed herein; that I have compared the same with the originals and they are true and correct transcripts therefrom.

I further certify that I attach hereto and herewith

transmit the original Citation with return thereon;

I further certify that the cost of preparing and certifying said transcript amounts to the sum of \$27.70, which amount has been paid to me by the solicitor for appellants.

IN TESTIMONY WHEREOF, I have hereto set my hand and affixed the seal of this court at Tacoma, in said District, this 23d day of February, A. D. 1914.

[Seal]

FRANK L. CROSBY,

Clerk. [42]

Citation on Appeal [Original].

In the District Court of the United States for the Western District of Washington, Western Division.

No. 1696.

W. H. SAWYER et al.,

Complainants,

vs.

RAYMOND S. GRAY et al.,

Defendants.

To Raymond S. Gray and Sena Gray, His Wife, W. A. Gray and Lois A. Gray, His Wife, Charles S. Forbes and Adelaide F. Forbes, His Wife; Frank L. Huston, John H. Patten and Dora W. Patten, His Wife, W. W. Barr and Gertrude G. Barr, His Wife and Milwaukee Land Company, a Corporation, Defendants, Greeting:

WHEREAS, W. H. Sawyer et al., appellants in the above-entitled suit, have lately appealed to the

United States Circuit Court of Appeals for the Ninth Judicial Circuit, from a decree lately rendered in the District Court of the United States for the Western District of Washington, Western Division, made in favor of you, the defendants in the above-entitled cause, and have filed the security required by law; you are therefore hereby cited to appear before the said United States Circuit Court of Appeals at the city of San Francisco, State of California, on the 4th day of March, 1914, next, to do and receive what may pertain to justice to be done in the premises.

Given under my hand at the city of Tacoma, in the Ninth Judicial Circuit, this 2d day of February, in the year of our Lord one thousand nine hundred fourteen.

[Seal]

EDWARD E. CUSHMAN,

Judge of the District Court of the United States.

[Admission of Service of Citation on Appeal, etc.]

CHICAGO, MILWAUKEE & ST. PAUL RAIL-
WAY COMPANY.

Legal Department.

Seattle, February 6, 1914.

Mr. Herbert S. Griggs,
Tacoma, Wash.

Dear Sir:

This will acknowledge receipt of your letter of the 4th inst., enclosing copies of the papers hereinafter designated in the case of W. H. Sawyer et al. vs. Raymond S. Gray et al., viz.:

Citation on appeal;

Order allowing appeal;

Petition for appeal;

Bond of appeal;

Assignment of errors;

Suggestion on the death of one of complainants and

Order of substitution.

Very truly yours,

F. M. DUDLEY,

General Attorney.

FMD-p.

No. 1696. Dist. Ct. U. S., West. Dist. Wn., West. Div.

[Endorsed]: No. 1696. In the United States District Court, Western District of Washington. W. H. Sawyer et al., Complainants, vs. Raymond S. Gray et al., Defendants. Citation on Appeal. Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Feb. 3, 1914. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy.

[Endorsed]: No. 2385. United States Circuit Court of Appeals for the Ninth Circuit. W. H. Sawyer and Frances Sawyer, His Wife, and Alfred C. Tuxbury and Luna B. Tuxbury, His Wife, Appellants, vs. Raymond S. Gray and Sena Gray, His Wife, W. A. Gray and Lois A. Gray, His Wife, Charles S. Forbes and Adelaide F. Forbes, His Wife, Frank L. Huston, John H. Patten and Dora W. Patten, His Wife, W. W. Barr and Gertrude G. Barr, His Wife, and Milwaukee Land Company, a Corporation, Appellees. Transcript of Record. Upon Ap-

peal from the United States District Court for the
Western District of Washington, Southern Division.

Received February 28, 1914.

F. D. MONCKTON,

Clerk.

Filed March 5, 1914.

FRANK D. MONCKTON,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Meredith Sawyer,

Deputy Clerk.

